APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 64—September Term, 1970.

(Rehearing *in banc* ordered March 3, 1971

Decided April 14, 1971.)

Docket No. 34826

ROBERT WILLIAMS,

Petitioner-Appellant,

—v.—

FREDERICK E. ADAMS, Warden,
Connecticut State Prison,

Respondent-Appellee.

Before:

LUMBARD, *Chief Judge*,
FRIENDLY, SMITH, KAUFMAN, HAYS,
ANDERSON and FEINBERG, *Circuit Judges.*

PER CURIAM:

Upon application by petitioner, a majority of the active members of this court voted to reconsider *in banc* the decision of the panel in this case on the record and briefs originally filed, without further oral argument. Both parties were invited to file supplemental briefs, and both have done so. Upon reconsideration, we conclude that on the basis of the facts then known to him, Sergeant Connolly had neither probable cause to arrest Williams nor any

other sufficient cause for reaching into Williams's waistband, an action which led to the subsequent search of Williams's car and the discovery of a machete and narcotics later introduced in evidence at Williams's trial. See *Terry* v. *Ohio*, 392 U.S. 1 (1969); *Spinelli* v. *United States*, 303 U.S. 410 (1969); *Aguilar* v. *Texas*, 378 U.S. 108 (1964); *Henry* v. *United States*, 361 U.S. 98 (1959); *Draper* v. *United States*, 358 U.S. 307 (1959). Since those illegally seized items should have been excluded from evidence, Williams's conviction must be set aside. Accordingly, we reverse the order of the district court denying Williams's petition for a writ of habeas corpus.

HAYS, *Circuit Judge* (dissenting):

The facts of this case were as follows:

> "At 2:15 on a Sunday morning, a sergeant of the Bridgeport police department was patrolling alone in a section of Bridgeport noted for its high incidence of crimes of various kinds. There he met a person known to him and considered by him to be trustworthy and reliable who pointed to an automobile parked on the other side of the street and told him that a person seated in the vehicle was armed with a pistol at his waist and had narcotics in his possession. The defendant was the occupant of this automobile and was seated on the passenger's side of the front seat. The sergeant walked across the street, tapped on the window of the automobile and told the defendant to open the door. The defendant rolled down the window of the door, and the sergeant immediately reached directly to the defendant's waistband and removed a fully loaded, .32-caliber revolver from the waistband of the defendant's trousers. He thereupon arrested

> the defendant, and thereafter a search was made of the defendant and the automobile. The search disclosed . . . a machete under the front seat, twenty-one cellophane packets containing a white substance in the defendant's wallet and six similar packets in a jar in the defendant's right-hand coat pocket. Later tests of ten of the cellophane packets established that they contained heroin." *State v. Williams*, 157 Conn. 114, 116-17 (1968); cert. denied, 395 U.S. 927 (1969).

In *Brinegar v. United States*, 338 U.S. 160, 175 (1949), the Court said:

> "In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act."

A familiar way of testing the "factual and practical considerations of everyday life" is to ascertain what practical everyday people would do in the given factual circumstances. I would suppose that very close to one hundred per cent of the people of this country, if they were asked whether in the situation in which he found himself, the Bridgeport police sergeant's actions were those of a reasonable and prudent man, would unhesitatingly reply in the affirmative. If the police officer had disregarded the information that a man sitting alone in a car in a high crime area at 2:15 in the morning had a gun stuck in his belt, his conduct, far from being reasonable and prudent, would have been bizarre and erratic.

An "exclusionary rule" which deters police officers from taking ordinary precautions against criminal conduct and encourages possession of guns, machetes and narcotics, is surely an unacceptable rule.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 64—September Term, 1970.

(Argued September 29, 1970 Decided December 16, 1970.)

Docket No. 34826

ROBERT WILLIAMS,

Petitioner-Appellant,

—v.—

FREDERICK E. ADAMS, Warden, Connecticut State Prison,

Respondent-Appellee.

Before:

DANAHER,* FRIENDLY and HAYS,

Circuit Judges.

Appeal from denial of petition for a writ of habeas corpus after hearing before T. Emmet Clarie, *United States District Judge* for the District of Connecticut. Affirmed.

DONALD A. BROWNE, Assistant State's Attorney for Fairfield County, Connecticut (JOSEPH T. GORMLEY, JR., State's Attorney), *for Appellee.*

* Senior United States Circuit Judge of District of Columbia Circuit, sitting by designation.

Appendix B

EDWARD F. HENNESSEY, Esq., of Hartford, Connecticut, *for Appellant.*

DANAHER, *Senior Circuit Judge*:

Charged with carrying a pistol on his person without a permit, §29-35 of the Connecticut General Statutes, with having narcotic drugs in his control, §19-246, and having a weapon in a motor vehicle occupied by him, §29-38, appellant was convicted in the Superior Court for Fairfield County, Connecticut, after a trial to the court. His conviction was affirmed on appeal, *State* v. *Williams*, 157 Conn. 114, 249 A.2d 245 (1968), *cert. denied* 395 U.S. 927 (1969). Thereupon he sought habeas corpus in the United States District Court for the District of Connecticut raising claims identical with those which had been considered theretofore in the state courts. His petition alleged that the evidence used against him in his state court trial was the product of an illegal search and seizure. Additionally he claimed he had been denied a speedy trial. District Judge Clarie denied relief, and appellant now has turned to us. We affirm.

I.

After a hearing, Judge Clarie found to have been substantiated the facts set forth in the Superior Court record and relied upon by the Supreme Court of Connecticut. Compendiously restated, we may note the following as here pertinent:

> "At 2:15 on a Sunday morning, a sergeant of the Bridgeport police department was patrolling alone in a section of Bridgeport noted for its high incidence

of crimes of various kinds. There he met a person known to him and considered by him to be trustworthy and reliable who pointed to an automobile parked on the other side of the street and told him that a person seated in the vehicle was armed with a pistol at his waist and had narcotics in his possession. The defendant was the occupant of this automobile and was seated on the passenger's side of the front seat. The sergeant walked across the street, tapped on the window of the automobile and told the defendant to open the door. The defendant rolled down the window of the door, and the sergeant immediately reached directly to the defendant's waistband and removed a fully loaded, .32-caliber revolver from the waistband of the defendant's trousers. He thereupon arrested the defendant, and thereafter a search was made of the defendant and the automobile. The search disclosed . . . a machete under the front seat, twenty-one cellpphane packets containing a white substance in the defendant's wallet and six similar packets in a jar in the defendant's right-hand coat pocket. Later tests of ten of the cellophane packets established that they contained heroin." *State* v. *Williams, supra,* 157 Conn. at 116, 117, 249 A.2d at 248, 249.

The Supreme Court of Connecticut decided that under the circumstances shown, the conduct of the officer was justifiable under the applicable Connecticut statutes.[1]

---

1 Title 6, §49, Connecticut General Statutes Annotated, provides in pertinent part:

"... [P]olice officers ... in their respective precincts, *shall arrest,* without previous complaint and warrant, any person for any offense in their jurisdiction, when such person is taken or apprehended in the act or on the *speedy information of others,* and members ...

Appendix B

Thus the arrest which followed was fully sustainable quite aside from any authority given the officer by §6-49; his action was reasonable for he had not conducted a general exploratory search, he had merely grabbed the loaded revolver from the place where his informant had said it would be. In reliance upon *Terry* v. *Ohio*, 392 U.S. 1 (1968), the Court found that the course taken by the officer was far less extensive than that found reasonable in *Terry*.

II.

That the findings and conclusions of the Connecticut courts were not insulated from examination by Judge Clarie is obvious. *Ker* v. *California*, 374 U.S. 23, 34 (1963). Granting that the law of the state where the arrest without warrant took place determines its validity, *United States* v. *Di Re*, 332 U.S. 581, 589, *United States* v. *Viale*, 312 F.2d 595, 599 (2 Cir. 1963), we take account of the federal constitutional standard in appraising the issue here. Williams was arrested for illegal possession of

---

of an organized local police department . . . shall arrest, without previous complaint and warrant, any person who such officer has reasonable grounds to believe has committed or is committing a felony. Any person so arrested shall be presented with reasonable promptness before proper authority." (Emphasis added.)

The Connecticut courts have construed the statute to require that an officer "shall" arrest on the "speedy information of others," and so as an Act passed primarily to guide officers in the performance of their duties. *State* v. *Adinolfi*, 157 Conn. 222, 226, 253 A.2d 34 (1968); *Sims* v. *Smith*, 115 Conn. 279, 161 A. 239 (1932); *McKenna* v. *Whipple*, 97 Conn. 695, 701, 118 A. 40 (1922); *Price* v. *Tehan*, 84 Conn. 164, 167, 79 A. 68 (1911); and see *United States* v. *Traceski*, 271 F. Supp. 883, 885 (D. Conn. 1967).

Indeed, as bearing upon an officer's reliance upon speedy information, §53-168 provides punishment by fine or imprisonment or both for any person who knowingly makes to a police officer a false report or false complaint that a crime has been or is being committed.

a revolver. If that arrest were lawful, evidence secured as an incident thereto might properly be received. Were the facts and circumstances within the knowledge of the officer and of which he had reasonably trustworthy information sufficient to warrant a man of reasonable caution in the belief that an offense was being committed? The answer to that question determines the present issue. *Brinegar v. United States*, 338 U.S. 160, 175-176 (1949); *United States v. Traceski*, 271 F. Supp. 883, 885 (D. Conn. 1967); cf. *United States v. Rosse*, 418 F.2d 38, 39, n. 2 (2 Cir. 1969), *cert. denied*, 397 U.S. 998 (1970).

Inevitably, issues such as ours must be resolved upon the particular facts which vary from case to case. See, e.g., the discussion by Circuit Judge (now Justice) Blackmun in *Rodgers v. United States*, 362 F.2d 358, 362 (8 Cir. 1966), followed in *Kayser v. United States*, 394 F.2d 601, 605 (8 Cir.), *cert. denied*, 393 U.S. 919 (1968); cf. *Smith v. United States*, 358 F.2d 833, 835 (D.C. Cir. 1966) (Opinion by Circuit Judge, now Chief Justice, Burger).

So it is that our appellant relies upon *Sibron v. New York*, 392 U.S. 40 (1968), even as he would discount the companion case involving *Peters*, 392 U.S. at 66, and would reject the reasoning of *Terry v. Ohio*, 392 U.S. 1 (1968). The Court itself spelled out a distinction in *Chimel v. California*, 395 U.S. 752, 762 (1969). Where *Terry* had held that the scope of the search must be strictly tied to and justified by the circumstances involving a protective search for weapons, in *Sibron* the policeman had not been motivated by or his action limited to the objective of protection. On the contrary, *Chimel* explained, the officer had put his hand into the suspect's pocket with the purpose of finding narcotics which indeed were found.

Appendix B

In our case, the officer testified that he reached for the gun in concern for his own protection, and "I didn't want him to use the pistol on me, sir."

Chimel made clear that

> "When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." 394 U.S. 752, 762-763.

So, we turn back, once again, to the circumstances under which the arrest occurred.

Here the officer received a complaint from an informant who was known to him, considered by the officer to be trustworthy and reliable, and one who in the past, as Judge Clarie found, had supplied valuable information regarding criminal activities. Cf. *United States* v. *Gazard Colon*, 419

F.2d 120, 122 (2 Cir. 1969). At once let it be noted additionally, that this was not the usual "informant" detailing aspects of some earlier action. He described current circumstances there and then constituting a felony under Connecticut law.

This was an eye-witness, invested with "built-in credibility." *McCreary* v. *Sigler*, 406 F.2d 1264, 1269 (8 Cir.), *cert. denied*, 395 U.S. 984 (1969); cf. *United States* v. *Acarino*, 408 F.2d 512, 514 (2 Cir.), *cert. denied*, 395 U.S. 961 (1969). He pointed out to the officer that there was at that very time a car parked across the street; there was a person seated in that vehicle; that person was armed; that he had a pistol at his waist and had narcotics in his possession.

Since this was a Bridgeport police sergeant, it is not unreasonable to infer he was experienced. Patrolling alone in an area noted for its high incidence of crimes of various kinds, he received the complaint that a crime was then in progress. Guided by Connecticut law, he was bound to act on the speedy information then at hand. *Supra*, note 1, and compare *Jackson* v. *United States*, 408 F.2d 1165, 1169 (8 Cir.), *cert. denied*, 396 U.S. 862 (1969). He crossed the street, saw the appellant in the car, and could readily check personally on the facts made available to him. Then he told that person to open the car door. Instead, the latter rolled down the window. The gun was at the appellant's waist just as the witness had described, and the officer seized a fully-loaded pistol. He thereupon arrested Williams.

That Williams, unlike *Terry*, was seated in a car is immaterial under the circumstances here. In determining whether the officer as a reasonably prudent man in the

circumstances acted reasonably in the belief that his safety might be in danger, we can not fail to give due weight to the specific reasonable inferences which he was entitled to draw from the facts in light of his experience. Swift measures were required that the exact facts might be determined and that the threat of harm be neutralized. The protection of the police officer required no less.[2]

Consequent upon the arrest, immediate search disclosed that Williams had a machete at his feet under the seat of the car. The intrusion, in short, was "reasonably designed" to discover, not only the pistol, but "other hidden instruments for the assault of the police officer." *Terry* v. *Ohio*, 392 U.S. 1, 29 (1968).

We may properly conclude here with Chief Justice Warren that:

> ". . . We are now concerned with more than the governmental interest in investigating crime; in addition, there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a

---

2 Mr. Justice Black has emphasized that the test in such situations, in last analysis, turns upon "reasonableness." *Preston* v. *United States*, 376 U.S. 364, 367 (1964). He is not alone in that view. Another noted jurist has observed:

> It does not seem consistent with the objective of deterrence that the maximum penalty of exclusion should be enforced for an error of judgment by a policeman, necessarily formed on the spot and without a set of *United States Reports* in his hands, which is not apparent years later to several Justices of the Supreme Court. At least in cases of this sort, where, in contrast to confessions of dubious reliability, the evidence cannot impair any proper defense on the merits, the object of deterrence would be sufficiently achieved if the police were denied the fruit of activity intentionally or flagrantly illegal—where there was no reasonable cause to believe there was reasonable cause.
>
> H. Friendly, *The Bill of Rights as a Code of Criminal Procedure*, 53 California Law Review, 929, 952 (October, 1965).

weapon that could unexpectedly and fatally be used against him." *Terry* v. *Ohio, supra,* at 23.

We agree with the Connecticut Supreme Court and with the District Judge that here the arrest of Williams was valid.[3] The search incident to the arrest accordingly was lawful and the weapons and the narcotics were correctly received in evidence against Williams.

III.

Appellant contends that he had been denied a speedy trial. Following appellant's arrest on October 30, 1966, there were various pre-trial motions after which the appellant was bound over from the lower court to the Superior Court. On March 20, 1967 appellant's counsel, for the first time, made an oral motion for early trial. The case was at once assigned for trial on April 4, 1967, and following trial, the judgment appealed from was rendered on April 28, 1967. We find no merit in this contention.[4]

IV.

Appellant's argument concerning nondisclosure of the "informant" must fall. He developed no compliance with criteria such as had been set forth in *Roviaro* v. *United States,* 353 U.S. 53, 61 (1957). There was no indication of

---

3 See, generally, *United States* v. *Thompson,* 420 F.2d 536, 540-541 (3 Cir. 1970); *Klingler* v. *United States,* 409 F.2d 299, 302-307 (8 Cir.), *cert. denied,* 396 U.S. 859 (1969); cf. *Chambers* v. *Maroney,* 399 U.S. 42, 51 (1970) and *United States* v. *Gorman,* 355 F.2d 151, 154-155 (2 Cir. 1965).

4 *United States* v. *DeLeo,* 422 F.2d 487, 493, 496 (1 Cir.), *cert. denied,* 397 U.S. 1037 (1970); *United States ex rel. Solomon* v. *Mancusi,* 412 F.2d 88 (2 Cir.), *cert. denied,* 396 U.S. 936 (1969); *United States* v. *Maxwell,* 383 F.2d 437, 441 (2 Cir. 1967) and *United States* v. *Fay,* 313 F.2d 620, 623 (2 Cir. 1963).

how the informant's testimony could help establish this appellant's innocence. *Rugendorf* v. *United States*, 376 U.S. 528, 535 (1964). The Court has never "approached the formulation of a federal evidentiary rule of compulsory disclosure where the issue is the primary one of probable cause, and guilt or innocence is not at stake." *McCray* v. *Illinois*, 386 U.S. 300, 308-311 (1967). Surely there is no absolute rule in any event as to these situations, and under the circumstances of this case, no error has been made to appear.

Affirmed.*

FRIENDLY, *Circuit Judge* (dissenting):

As this case was argued both in the district court and on appeal, Connecticut sought to validate the police sergeant's actions solely on the basis of "stop and frisk." Eschewing the argument that Officer Connolly had probable cause for arrest, it contended that he did have enough cause to make it reasonable to demand that Williams open the door of the car.[1] Once that proposition was established, the State's argument continued, quite logically, as follows:

(1) Since leaving Williams in the car without immediate removal of the gun would have exposed the officer to danger, he was justified in reaching into Williams' waistband and taking the gun without attempting to "pat," a course impracticable under the circumstances;

(2) Having found the gun, the officer had reasonable grounds for arresting Williams, since persons reputedly

---

* The Court is indebted to Edward F. Hennessey, Esquire, of Hartford who without remuneration has so earnestly and diligently represented the appellant.

1 The State does not contend that Williams' action was voluntary.

engaged in the narcotics traffic do not ordinarily have gun permits; and

(3) Since the arrest was thus valid, the search was reasonable, at least under pre-*Chimel* law.

My difficulty was, and is, not with these three steps but with the premise underlying them, namely, that Officer Connolly had "constitutional grounds to insist on an encounter, to make a *forcible* stop," *Terry* v. *Ohio*, 392 U.S. 1, 32 (concurring opinion of Harlan, *J.*).[2]

As I read my brother Danaher's opinion, he believes that when Connolly approached Williams' car, the officer had sufficient cause not simply for a stop but for an arrest. I cannot agree. The officer's own observation—nothing more than seeing a man sitting alone in a car at 2:15 A.M. in a "high-crime" area—fell far short of what the Court held insufficient in *Henry* v. *United States*, 361 U.S. 98 (1959), which also involved the arrest of occupants of an automobile. Almost everything must therefore turn on what the unnamed informer said, and the value of his statement does not approach the requirements laid down in the three Supreme Court decisions which establish the constitutional parameters in this area. These are *Draper* v. *United States*, 358 U.S. 307 (1959), where the combination of information and observation was held sufficient for a warrantless arrest, and *Aguilar* v. *Texas*, 378 U.S. 108 (1964), and *Spinelli* v. *United States*, 393 U.S. 410 (1969), where affidavits for search warrants were held insufficient. In contrast to the

---

2 It seems clear that this is the threshold issue. I do not read the Chief Justice's opinion as holding otherwise, although, as Mr. Justice Harlan indicated, 392 U.S. at 32, the thought may not have been "fully expressed." If the initial intrusion is justified, the privilege of the officer to take reasonable steps believed in good faith to be necessary for his own safety scarcely requires argument.

named informer in *Draper*,[3] a "special employee" of the Narcotics Bureau who had given reliable information about narcotics for six months, the only basis for Officer Connolly's belief in the unnamed informer here was that on one prior occasion the latter had given information about homosexual activity at the Bridgeport Railroad Station, which, however, was never substantiated and did not lead to an arrest. While the officer's explanation that the suspect in the station desisted because he saw the police coming may be reasonable enough, the episode, even if it had turned out more successfully for the police, would scarcely establish the informer as an authority on narcotics or guns. In addition, the informer in *Draper* had provided a detailed description of the scenario which the suspect later performed, thus making the report one that, in the language of *Spinelli*, 393 U.S. at 417-18, "was of the sort which in common experience may be recognized as having been obtained in a reliable way." By contrast, the informer here, assuming he existed,[4] related a single fact with no indication of how he had come upon it. The inarticulate premise for the reliability of this scant information, namely, that no one could have stated such a fact unless he had personally observed it, is precisely the view that *Aguilar*, 378 U.S. at 113-14, and *Spinelli*, 393 U.S. at 416-17, rejected. It is as true here as in *Spinelli*, 393 U.S. at 417, that "this meagre report could easily have been obtained from an off-hand remark heard at a neighborhood bar,"[5] and there

---

3 Named doubtless because he had died within a few days after the arrest.

4 It is cause for no small wonder that on the first suppression hearing, Officer Connolly never mentioned the informer but said he had responded to a police signal. In the subsequent hearing the informer appeared and the signal disappeared. See note 9 *infra*.

5 The majority opinion urges against this that because the alleged informant was allegedly across the street, he should be regarded as

was less, in fact nothing, in the way of meaningful corroboration by police investigation before the intrusion. I therefore turn to what I regard as the serious and doubtful issue whether, despite the absence of probable cause for arrest, Officer Connolly was nonetheless justified under *Terry* v. *Ohio, supra,* 392 U.S. 1, in demanding that Williams open the door of the car.

It has been well said that *Terry* and the two other cases decided with it, *Sibron* v. *New York* and *Peters* v. *New York,* 392 U.S. 4 (1968), constitute "the Court's first word —but certainly not its last—on the subject of stop and frisk . . . . [T]his was the Court's first foray into this particular thicket, and it is thus understandable that it made a conscious effort to leave sufficient room for later movement in almost any direction." La Fave, "Street Encounters" and the Constitution, 67 Mich. L. Rev. 39, 46 (1968). Of the three decisions, only in *Terry* did a majority of the Court sustain a stop and protective search where there had been less than probable cause for arrest.[6] The Chief Justice was at pains to make clear the limited character of the holding, when he said in the concluding paragraph of his opinion, 392 U.S. at 30-31: "We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience

---

an "eye-witness" and cites *McCreary* v. *Sigler,* 406 F.2d 1264, 1269 (8 Cir. 1969), and *United States* v. *Acarino,* 408 F.2d 512, 514 (2 Cir.), *cert. denied,* 395 U.S. 961 (1969), in support. In *McCreary,* the informant gave a detailed affidavit of his observations including the fact that he had seen McCreary in the phone booth whence the coin box was stolen and heard coins rattling. In *Acarino* the informer had given a detailed scenario á la *Draper.* Here the implicit assumption that the informer had been with Williams in the car or saw him enter it is sheer speculation.

6 The search in *Sibron* was held unlawful because the officer was seeking to find narcotics rather than to protect his own safety; in *Peters* the majority found there was probable cause for arrest.

that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous," he may make a stop and conduct a protective search under the conditions there defined.

The instant case differs from *Terry* in important respects. Officer Connolly himself observed no "unusual conduct" leading him "reasonably to conclude . . . that criminal activity may be afoot"—unless we are to say that the mere fact of Williams' sitting alone in an automobile at 2:15 A.M. in a "high-crime" area is so inherently suspicious as to justify such a conclusion—a view I would deem exceedingly dangerous. The officer's only basis for believing that Williams may have been committing a crime was the alleged tip from the not proved to be reliable, unnamed informer. See 19 Buffalo L. Rev. 680, 685-86 (1970). Moreover, what Officer McFadden saw in *Terry* was "unusual conduct" giving reason to believe that armed robbery was about to be committed; swift intervention on his part was required to prevent a serious crime of violence. Here, while Officer Connolly could well have thought that Williams would not possess the gun and narcotics mentioned by the informer merely for pleasure, he could not have believed that sale of the narcotics or use of the gun was imminent, and the record suggests that the officer had ample means for placing Williams under surveillance. See, in this connection, Mr. Justice Harlan's concurring opinion in *Sibron*, 392 U.S. at 73.

The question thus becomes whether, even though the decisions of the Supreme Court of Connecticut and the district court in this case go beyond the facts of *Terry* and the narrow statement of its holding, they are nevertheless within its rationale. This seems to lie in the passages, 392 U.S. at 26-27, where the Chief Justice explained

that, in contrast to an arrest, "the protective search for weapons . . . constitutes a brief, though far from inconsiderable, intrusion upon the sanctity of the person"; that, because of the lesser nature of th intrusion, a smaller showing of cause may suffice; and that Terry's "reliance on cases which have worked out standards of reasonableness with regard to 'seizures' constituting arrests and searches incident thereto is thus misplaced." A further signal that the Court was thus adopting a test balancing the amount of cause required to be shown against the extent of the particular invasion of personal security was given by the citation of *Camera* v. *Municipal Court*, 387 U.S. 523, 534-37 (1967). See LaFave, *supra*, 67 Mich. L. Rev. at 54-56; Hall, Kamisar, LaFave and Israel, Modern Criminal Procedure 324-26 (1969).

The Court's decision that less may be required to justify a stop and a protective search than an arrest and a search incidental thereto leaves many open questions. How much less is enough? Does something depend upon the seriousness of the offense?[7] Cf. *Brinegar* v. *United States*, 338 U.S. 160, 183 (1949) (dissenting opinion of Mr. Justice Jackson). What favor, if any, should be shown to intervention aimed at preventing crime rather than detecting it? Cf. LaFave, *supra*, 67 Mich. L. Rev. at 66; 82 Harv. L. Rev. 178, 182 (1968). Do not such factors enter into an appraisal of what the Court evidently regarded as one significant test—whether failure to take immediate action

---

7 As said in LaFave, *supra*, 67 Mich. L. Rev. at 57:

> Taking into account the seriousness of the offense does not require the use of some fine-spun theory whereby each offense in the criminal code has its own probable-cause standard; rather, it involves only the common-sense notion that murder, rape, armed robbery, and the like call for a somewhat different police response than, say, gambling, prostitution, or possession of narcotics.

would be "poor police work"? 392 U.S. at 23. While almost everyone would agree it would have been "poor police work" for Officer McFadden to have failed to take action to foil an armed robbery by Terry and his confederates, many would think Officer Connolly would have done well enough to report what he allegedly had been told and the little he had seen.

Only future decisions by the Supreme Court can answer these and other questions. Striking the balance here as best I can in light of the few guidelines thus far available, I would hold the State had not shown sufficient cause to justify a forcible stop:

To begin, I have the gravest hesitancy in extending *Terry* to crimes like the possession of narcotics, see LaFave, *supra*, 67 Mich. L. Rev. at 65-66. There is too much danger that, instead of the stop being the object and the protective frisk an incident thereto, the reverse will be true. Against that we have here the added fact of the report that Williams had a gun on his person. I would follow Mr. Justice Harlan in thinking that "if the State . . . were to provide that police officers could, on articulable suspicion less than probable cause, forcibly frisk and disarm persons thought to be carrying concealed weapons, . . . action taken pursuant to such authority could be constitutionally reasonable." *Terry* v. *Ohio*, *supra*, 392 U.S. at 31. But, as in *Terry*, the State here has done nothing of the sort. Connecticut allows its citizens to carry weapons, concealed or otherwise, at will, provided only they have a permit, Conn. Gen. Stat. §§29-35 and 29-38, and gives its police officers no special authority to stop for the purpose of determining whether the citizen has one. Indeed, as my analysis of the State's argument shows, the narcotics and

the gun are inseparably linked; it is the report about narcotics on which the State pins reasonable cause to arrest for illegal possession of a gun.

If I am wrong in thinking that *Terry* should not be applied at all to mere possessory offenses, and a dictum in *Sibron*, 392 U.S. at 63, indicates that I may be, I would not find the combination of Officer Connolly's almost meaningless observation and the tip in this case to be sufficient justification for the intrusion. The tip suffered from a threefold defect, with each fold compounding the others. The informer was unnamed, he was not shown to have been reliable with respect to guns or narcotics, and he gave no information which demonstrated personal knowledge or—what is worse—could not readily have been manufactured by the officer after the event. To my mind, it has not been sufficiently recognized that the difference between this sort of tip and the accurate prediction of an unusual event is as important on the latter score as on the former. Narcotics Agent Marsh would hardly have been at the Denver Station at the exact moment of the arrival of the train Draper had taken from Chicago unless *someone* had told him *something* important, although the agent might later have embroidered the details to fit the observed facts. Cf. *United States* v. *Camissiong*, 429 F.2d 834 (2 Cir. 1970). There is no such guarantee of a patrolling officer's veracity when he testifies to a "tip" from an unnamed informer saying no more than that the officer will find a gun and narcotics on a man across the street,[8] as he later does. If the state wishes to rely on a tip of that

---

8 While the findings of the Connecticut courts and the district court preclude our holding that the unnamed informer did not exist in this case, we can take the danger of fabrication into account in framing a general rule.

nature to validate a stop and frisk, revelation of the name of the informer or demonstration that his name is unknown and could not reasonably have been ascertained should be the price."

Terry v. *Ohio* was intended to free a police officer from the rigidity of a rule that would prevent his doing anything to a man reasonably suspected of being about to commit or having just committed a crime of violence, no matter how grave the problem or impelling the need for swift action, unless the officer had what a court would later determine to be probable cause for arrest. It was meant for the serious cases of imminent danger or of harm recently perpetrated to persons or property, not the conventional ones of possessory offenses. If it is to be extended to the latter at all, this should be only where observation by the officer himself or well-authenticated information shows "that criminal activity may be afoot."

---

9. The State's claim that Williams failed previously to raise this point is without foundation. At the first hearing on Williams' motion to suppress evidence, Officer Connolly testified he was in a radio car and responded to a police signal directing him to go to the Williams car. No mention of an informant was made at that time. After Williams was bound over to the Fairfield County Superior Court, a second hearing was held and the officer testified that while on patrol he met an undisclosed informant who told him that Williams was in the car with drugs and a gun. Williams' attorney asked who the informant was, but the state objected, the court sustained the objection, and Williams' attorney took an exception. Again, in his amended and second amended petitions for habeas corpus presented to the Superior Court for Hartford County, Williams claimed his conviction was illegal since his "right of confrontation and due process rights were violated by reason of the Court's failure to permit inquiry as to the identity of the police informant upon whose information the probable cause was claimed." Finally, in the Claims of Law which Williams submitted to support his federal habeas corpus petition, he mentioned that he had sought to elicit the identity of the informant but was not permitted to do so; he alleges also that at the federal habeas hearing the judge sustained an objection to questions on the informant's identity.

Appendix B

392 U.S. at 30. I greatly fear that if the decision here should be followed, *Terry* will have opened the sluice-gates for serious and unintended erosion of the protection of the Fourth Amendment.

I would grant the writ.

APPENDIX C

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. 13,428

ROBERT WILLIAMS,

Petitioner,

v.

FREDERICK E. ADAMS, Warden, Connecticut State Prison,

Respondent.

RULING ON PETITION FOR A WRIT OF HABEAS CORPUS

The petitioner, a state prisoner, has brought this application for a writ of habeas corpus claiming that the evidence used against him in his state court trial and conviction was the product of an illegal search and seizure and that he was denied the right to a speedy trial. He represents that timely motions to suppress the evidence were made, both at the preliminary hearing in the state circuit court and in the superior court, and that all state remedies on the issues raised have been exhausted. *State* v. *Williams,* 157 Conn. 114 (1968); and the Court so finds. Because of a conflict in the evidential record educed at the two aforesaid state court hearings, relating to the arresting officer's justification for making the challenged search and seizures, it was necessary that this hearing be held to ascertain the true facts. *Townsend* v. *Sain,* 372 U. S. 293, 313 (1963). Therefore, the Court appointed counsel and approved the petitioner's application to proceed in forma pauperis.

Appendix C

Petitioner was convicted of violating Connecticut General Statutes § 19-246, possession of narcotics, § 29-35, carrying a pistol on his person without a warrant and § 29-38, having a weapon in a vehicle. On the night of his arrest, he was seated alone in an automobile in a high crime area of Bridgeport, Connecticut at 2:15 on a Sunday morning. The arresting officer, acting on speedy information furnished by a reliable informant, that Williams had a gun in his belt and narcotics on his person, went to the car to investigate. The policeman asked him to open the door and Williams responded by rolling down the window. The officer immediately reached inside the car and removed a fully loaded pistol from Williams' waistband. He then placed Williams under arrest and conducted a further search of his person and of the automobile. This search produced several packets of a substance which later proved to be heroin taken from his person, a machete was found under the front seat of the car and a second pistol in the trunk. The conviction § 29-38, Conn. Gen. Stat., involved only his possession of the machete.

The conflict in the evidential record, which required this Court to grant a hearing, revolved around the source of the information upon which the police officer had relied in making his seizure of the first pistol. The record of the proceedings on the first motion to suppress in the state circuit court indicates that the officer was responding to some kind of a "signal" or "call" of unspecified origin. In the state superior court the testimony of the officer was that the information was transmitted to him by a person whom he met within view of the petitioner's automobile and who was known to him and considered by him to be trustworthy and reliable. This conclusion of trustworthiness was based, in part, on the fact that on at least one prior occasion this informant had supplied reliable information regarding criminal activities. Although this pre-

vious information did not lead to an arrest the officer was convinced that it was correct and that the only reason no arrest resulted was that the suspects saw the officer and ceased their criminal conduct.

At this Court's hearing the facts as they appear in the superior court record were substantiated and using them as the findings of this Court, petitioner's motion for habeas corpus is denied.

The ruling on this motion, as to the search and seizure issue, turns on the propriety of the officer's actions in reaching into the car and removing the pistol from the petitioner. The test to be applied is as follows:

> "(T)he conduct involved in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures . . . .
>
> "In order to assess the reasonableness of (the officer's) conduct as a general proposition, it is necessary 'first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen,' for there is 'no ready test for determining reasonableness other than by balancing the need to search (or seize) against the invasion which the search (or seizure) entails.' *Camara* v. *Municipal Court*, 387 U. S. 523, 534-535, 536-537 (1967). And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry* v. *Ohio*, 392 U. S. 1, 20-21 (1968).

The governmental interest at work in *Terry*, and in the case at bar, is the interest of the policeman in protecting himself and others in situations where probable cause for arrest is lacking. (It appears clear on these facts that

under § 6-49, Conn. Gen. Stat., as construed in *State* v. *Carroll,* 131 Conn. 224, providing for arrest on "speedy information" that where a crime has been or is being committed, that Williams might have been properly arrested and all searches been properly conducted incident thereto. *State* v. *Williams,* 157 Conn. 114, 118 (1968). The state, however, has not chosen to rely on this statute but rather on the "protective search" theory of *Terry* v. *Ohio, supra*).

In weighing the above need, the justification for the invasion must be considered. A mere "hunch" on the officer's part, even if in good faith, is insufficient. *Beck* v. *Ohio,* 379 U. S. 89, 96-97 (1964). Rather, the officer must be justified in believing that the person upon whom the intrusion is imposed is armed and presently dangerous to the officer or others. *Terry* v. *Ohio, supra* at 24. If such is the case "it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm." *Id.*

In the present case such justification existed, Petitioner was alone in an automobile in the early morning hours in a high crime area. While this in itself might be sufficient to raise an alert officer's suspicions, it probably, would be insufficient to justify a search. Here, however, the officer was primarily relying on information given him by a reliable informant, who had pointed out the location of the car and its occupant within visible distance of its location. This combination of circumstances was sufficient to empower the officer to constitutionally "take necessary measures to determine" if the party to observed was armed and therefore potentially dangerous.

Once some sort of action is found to be constitutionally permissible it must next be determined ". . . the nature and quality of the intrusion on individual rights which must be accepted if police officers are to be conceded the right to search for weapons in situations where probable

cause to arrest for crime is lacking." *Terry* v. *Ohio, supra,* at 24. Thus the question is what type of search would be reasonable in the circumstances as herein presented.

> "The sole justification of the search in the present situation is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer." *Terry* v. *Ohio, supra* at 29.

In *Terry* the search, which the Supreme Court upheld and which it characterized as one in which the officer "confined his search strictly to what was minimally necessary to learn whether the men were armed and to disarm them once he discovered the weapons," *Terry* v. *Ohio, supra* at 30, consisted of the patting down of the outer garments of the suspects and only reaching inside said garments to remove suspicious objects. In *Sibron* v. *New York*, 392 U. S. 40 (1968), a case decided the same day as was *Terry*, the Court attempted to distinguish a search where probable cause for arrest was lacking. Petitioner cites *Sibron* and quotes therefrom the following passage as supporting his position.

> "The search for weapons approved in *Terry* consisted solely of a limited patting of the outer clothing of the suspect for concealed objects which might be used as instruments of assault. Only when he discovered such objects did the officer in *Terry* place his hands in the pockets of the men he searched. In this case, with no attempt at an initial limited exploration for arms, Patrolman Martin thrust his hand into Sibron's pocket and took from him envelopes of heroin."

Petitioner analogizes the search in *Sibron* with the officer's action here of thrusting his hand inside the automobile and

partially under his coat to remove the gun. The cause, however, are clearly distinguishable, as is apparent from the language of the Court immediately following the above quoted passage which appeared in petitioner's brief.

> "His (Patrolman Martin's) testimony shows that he was looking for narcotics, and he found them. The search was not reasonably limited in scope to the accomplishment of the only goal which might conceivably have justified its inception—the protection of the officer by disarming a potentially dangerous man. Such a search violates the guarantee of the Fourth Amendment, which protects the sanctity of the person against unreasonable intrusions on the part of all governmental agents." *Sibron* v. *New York, supra* at 65-66.

Other distinguishing facts in *Sibron* are that the arresting officer there had no reasonable grounds to suspect that Sibron was involved in any criminal activity nor did he believe him to be armed.

The test remains, was the officer's action reasonable under all the circumstances. While the Supreme Court in both *Terry* and *Sibron* expressed approval of searches of this type consisting of a patting down of the suspect's outer clothing it did not limit its approval to that type of search. Indeed, such a search would have been impractical here. The officer's information was that Williams had a gun in the waistband of his pants. This could not have been verified by a pat-down search due to the fact that the suspect was seated in a car. In view of the darkness of the hour, rendering it impossible for the officer to see inside the car, it is too much to require that he stand beside it while its occupant, whom he had reason to believe had a gun in an easily accessible position, alights. This exposes the officer to the unreasonable risk that in the

process of getting out of the car the suspect may draw his gun and fire on him. Rather, the officer did the only thing reasonably calculated to protect himself by restricting his search to the immediate area of the suspect's person where he had reason to believe a weapon might be located. The fact that this required him to reach partially under the suspect's coat in extracting the gun does not make his actions any less reasonable in light of all the circumstances. As was the case in *Terry*, the officer here "confined his search strictly to what was minimally necessary to learn whether the (man was) armed and to disarm (him) once he discovered the (weapon)." *Terry* v. *Ohio*, *supra* at 30.

Once the officer found the gun and placed Williams under arrest, the remainder of his search was incident thereto. The only portion of this latter search which might be argued to have surpassed the boundaries set forth in *Chimel* v. *California*, 395 U. S. 752 (1969), was the search of the car's trunk, during which the second gun was found. This defect, if it was one, is cured by the fact that this second gun did not result in any further criminal charges. Thus, the petitioner was in no way subjected to an unreasonable search or seizure.

Petitioner also seeks release by alleging he was denied a speedy trial in contravention of the Sixth Amendment. A brief statement of the facts upon which this claim is grounded will be helpful. Williams was arrested on October 30, 1966. The next day he was presented in circuit court where the presiding judge appraised him of his constitutional rights. The case was then continued until November 3, 1966 at which time a public defender was appointed to represent him. The case was then continued until December 8, 1966 to await the state's toxicological examination on the white powder found on Williams at the time of his arrest. On December 8, 1966, he plead not guilty to all charges and various motions were made by his attorney. These motions were heard on December 22,

1966 and at that time the court found probable cause and Williams was bound over to the January, 1967 term of the superior court. On February 2, 1967, a special public defender was appointed and it was not until March 20, 1967, that he made an oral motion for a speedy trial. No other motion for a speedy trial was ever made. The trial began on April 4, 1967.

The Sixth Amendment, guaranteeing the right to a speedy trial was made applicable to the states by virtue of the Fourteenth Amendment, in *Klopfer* v. *North Carolina*, 386 U. S. 213 (1967). Although the Sixth Amendment has only recently been applied to the states, its scope has been developed in a series of criminal cases wherein the United States was a party.

> "This guarantee is an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of an accused to defend himself. However, in large measure because of the many procedural safeguards provided an accused, the ordinary procedures for criminal prosecution are designed to move at a deliberate pace. A requirement of unreasonable speed would have a deleterious effect both upon the rights of the accused and upon the ability of society to protect itself. Therefore, this Court has consistently been of the view that 'The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice.' *Beavers* v. *Haubert*, 198 U. S. 77, 87. 'Whether delay in completing a prosecution . . . . amounts to an unconstitutional deprivation of rights depends upon the circumstances. . . . The delay must not be purposeful

> or oppressive,' *Pollard* v. *United States*, 352 U. S. 354, 361. '(T)he essential ingredient is orderly expedition and not mere speed.' *Smith* v. *United States*, 360 U. S. 1, 10." *United States* v. *Ewell*, 383 U. S. 116, 120 (1966).

There is no substance to the claim that the state acted with other than "orderly expedition" in the prosecution of this matter. Nor has the petitioner been shown to have been prejudiced in any way by the allegedly undue delay on the part of the state. Thus, no Sixth Amendment violation is present. See *United States* v. *Simmons*, 338 F. 2d 804 (2d Cir. 1964); *United States ex rel. Von Cseh* v. *Fay*, 313 F. 2d 620 (2d Cir. 1963).

The writ of habeas corpus is denied and dismissed. So ORDERED.

The Court expresses its appreciation to Edward F. Hennessey, Esquire, of Hartford, who has so ably represented the petitioner in this proceeding, without benefit of any professional fee or remuneration.

Dated at Hartford, Connecticut, this 5th day of January, 1970.

T. EMMET CLARIE
United States District Judge

Adams v. Williams No. 70-283

APPENDIX D

STATE OF CONNECTICUT *v.* ROBERT WILLIAMS

KING, C. J., ALCORN, HOUSE, THIM and RYAN, Js.

As a matter of common law, when a police officer is justified in believing that the person whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.

Neither the state nor the federal constitution forbids searches and seizures but only unreasonable searches and seizures. The reasonableness of a search is, in the first instance, a determination to be made by the trial court from the facts and circumstances of the case.

A police officer, in the line of his assigned duty and in the small hours of the morning, was told by a person he considered reliable that an automobile which was pointed out to him was occupied by a man carrying narcotics and armed with a pistol at his waist. In the vehicle, parked on a public street in a high crime area, the defendant was seated on the passenger's side of the front seat. When told to open the door, the defendant rolled down the window and the officer reached in and grabbed a loaded revolver from the waistband of the defendant's trousers. *Held:*

1. The officer's action in taking the revolver from the defendant was a reasonable search and seizure.
2. The arrest which followed was justified not only by the legal search and seizure but by the statute (§ 6-49) providing that a police officer shall arrest without a warrant any person apprehended on the speedy information of others.

State v. Williams

In the Connecticut constitution, the provision for a speedy trial means that the state must proceed without unreasonable or undue delay. Each situation must be judged on the facts of the particular case; a delay may be waived, and waiver may be implied when the defendant does not object to delay. The defendant was arrested on October 30. The only motion for trial was made the following February 2 by the defendant's special public defender; trial was held April 4; and judgment was rendered April 28. Nothing in the circumstances of the case could be said to amount to the denial of a speedy trial.

Claimed mistreatment of an accused prior to trial is not a ground for attacking, on appeal, a judgment rendered within the limits of the statute punishing the offense. Consequently, the defendant's claim of cruel and unusual punishment in that while he was in jail he was denied proper medication and was unable, because of his condition, to eat some of the food provided for him was without merit.

Argued October 3—decided October 29, 1968

Information, in three counts, charging the defendant with the crimes of violation of the Uniform State Narcotic Drug Act, of carrying a pistol without a permit, and of having weapons in a vehicle, brought to the Superior Court in Fairfield County and tried to the court, *Radin, J.*; judgment of guilty on all three counts and appeal by the defendant. *No error.*

Bernard Green, special public defender, for the appellant (defendant).

Donald W. Browne, assistant state's attorney, with whom, on the brief, was *Otto J. Saur,* state's attorney, for the appellee (state).

ALCORN, J. The defendant was charged with having narcotic drugs in his control in violation of § 19-246 of the General Statutes, with carrying a pistol on his person without a permit in violation

of § 29-35 of the General Statutes, and with knowingly having a weapon in a vehicle owned, operated or occupied by him in violation of § 29-38 of the General Statutes. After a trial to the court, he was convicted on all three counts and has appealed from the judgment.

The claims on the appeal are that he was subjected to an illegal search and seizure of weapons, narcotics and implements for the administration of narcotics, that he was denied a speedy trial, and that he was subjected to cruel and unusual punishment.

At 2:15 on a Sunday morning, a sergeant of the Bridgeport police department was patrolling alone in a section of Bridgeport noted for its high incidence of crimes of various kinds. There he met a person known to him and considered by him to be trustworthy and reliable who pointed to an automobile parked on the other side of the street and told him that a person seated in the vehicle was armed with a pistol at his waist and had narcotics in his possession. The defendant was the occupant of this automobile and was seated on the passenger's side of the front seat. The sergeant walked across the street, tapped on the window of the automobile and told the defendant to open the door. The defendant rolled down the window of the door, and the sergeant immediately reached directly to the defendant's waistband and removed a fully loaded, .32-caliber revolver from the waistband of the defendant's trousers. He thereupon arrested the defendant, and thereafter a search was made of the defendant and the automobile. The search disclosed another revolver in the trunk of the car, a machete under the front seat, twenty-one cellophane packets containing a white substance in the defendant's

wallet and six similar packets in a jar in the defendant's right-hand coat pocket. Later tests of ten of the cellophane packets established that they contained heroin. In addition, the police found, in the defendant's hat, a hypodermic needle and other paraphernalia used in administering narcotics.

The claim is that the action of the police officer in taking the loaded revolver from the waistband of the defendant's trousers was an illegal search since it was done without a search warrant and was not incidental to a lawful arrest owing to the fact that the officer had neither an arrest warrant nor grounds for making an arrest without a warrant. The defendant's argument relies primarily on a claimed failure of the state to demonstrate the reliability of the officer's informant, in the light of cases such as *McCray* v. *Illinois*, 386 U.S. 300, 87 S. Ct. 1056, 18 L. Ed. 2d 62, rehearing denied, 386 U.S. 1042, 87 S. Ct. 1474, 18 L. Ed. 2d 616; *Beck* v. *Ohio*, 379 U.S. 89, 85 S. Ct. 223, 13 L. Ed. 2d 142; *Aguilar* v. *Texas*, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723; and *Draper* v. *United States*, 358 U.S. 307, 79 S. Ct. 329, 3 L. Ed. 2d 327. The defendant then proceeds to argue that, since the original seizure of the loaded revolver was illegal, it was not a valid basis for the arrest which followed and that the subsequent search must necessarily be invalidated because it was not incident to a legal arrest.

The argument is not persuasive. The defendant does not suggest what alternative course he thinks the officer should have followed upon receipt of the information given to him. The situation called for quick decision and prompt action. The officer, in the line of his assigned duty and in the small hours of the morning, was told by a person he considered reliable that an automobile which was pointed out to

him was then occupied by an armed man carrying narcotics. The vehicle was parked, for no apparent reason, on a public street in a high crime area. Under those circumstances, the officer exhibited not only a correct sense of duty but commendable personal courage in walking, single-handed, across the street to confront an armed man in that locality and in the dark of the night. The arrest which followed clearly was justifiable under the "speedy information" provision in § 6-49 of the General Statutes, as construed in *State* v. *Carroll*, 131 Conn. 224, 231, 38 A.2d 798.

Under the circumstances disclosed, the action of the officer was fully justified, however, quite aside from any authority given him by § 6-49.

Neither the state nor the federal constitution forbids searches and seizures. They forbid only unreasonable searches and seizures. *State* v. *Collins*, 150 Conn. 488, 492, 191 A.2d 253. The reasonableness of a search is, in the first instance, a determination to be made by the trial court from the facts and circumstances of the case. *Ker* v. *California*, 374 U.S. 23, 33, 83 S. Ct. 1623, 10 L. Ed. 2d 726; *State* v. *Mariano*, 152 Conn. 85, 93, 203 A.2d 305, cert. denied, 380 U.S. 943, 85 S. Ct. 1025, 13 L. Ed. 2d 962.

We are in accord with the proposition that, as a matter of common law, "[w]hen an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm." *Terry* v. *Ohio*, 392 U.S. 1, 24, 88

S. Ct. 1868, 20 L. Ed. 2d 889. The officer "did not conduct a general exploratory search for whatever evidence of criminal activity he might find." *Terry* v. *Ohio*, supra, 30. He merely reached in the car and grabbed the loaded revolver from the place where his informant had said it would be. We hold that, under the constitution of Connecticut as well as under the federal constitution, this action did not, under the circumstances, amount to an unreasonable search and seizure. In fact, the claimed "search" was far less extensive than that found reasonable in the *Terry* case. There is no claim that, if the seizure of the loaded revolver was legal, the arrest which followed, or the search incident to it, was illegal. The claim that the defendant was subjected to an illegal search and seizure is without merit.

The defendant was arrested on October 30, 1966. On the next day, he was presented in the Circuit Court and was advised of his constitutional rights, and his case was continued until November 3, 1966. On the latter date, a public defender was appointed to represent him, and his case was continued for five days, at which time his bond was reduced to an amount which is not claimed to have been excessive. From then until December 8, 1966, the case awaited the results of a laboratory analysis of the white powder which had been found on his person, and, during the interim, several conversations took place between his counsel and the prosecuting attorney. On December 8, 1966, the defendant was presented for plea in the Circuit Court, when various motions were filed by his counsel which were heard on December 22, and, on that date, the defendant was bound over to the January, 1967, term of the Superior Court. That court was continuously and fully

engaged in disposing of criminal cases from the opening of the term until, on March 20, 1967, the defendant's special public defender, who had been appointed on February 2, 1967, made an oral motion for a trial. No other motion for a speedy trial had been made. The case was thereupon assigned for trial on April 4, 1967, and, following the trial, the judgment appealed from was rendered on April 28, 1967.

We have interpreted the provision for a speedy trial now found in article first, § 8, of the 1965 Connecticut constitution to mean that the state must proceed without unreasonable or undue delay. *State* v. *Doucette,* 147 Conn. 95, 107, 157 A.2d 487; *Wojculewicz* v. *Cummings,* 145 Conn. 11, 21, 138 A.2d 512, cert. denied, 356 U.S. 969, 78 S. Ct. 1010, 2 L. Ed. 2d 1075; see note, 57 A.L.R.2d 302, 310, 326. Each situation must be judged on the facts of the particular case; a delay may be waived, and waiver may be implied when the defendant does not object to it. *State* v. *Hodge,* 153 Conn. 564, 569, 219 A.2d 367; *State* v. *Holloway,* 147 Conn. 22, 25, 156 A.2d 466, cert. denied, 362 U.S. 955, 80 S. Ct. 869, 4 L. Ed. 2d 872. The rule generally stated is that the prosecution is entitled to a reasonable time for preparation and the defendant is to be free from vexatious, capricious and offensive delays. 21 Am. Jur. 2d 279, Criminal Law, § 243. We find nothing in the circumstances of the present case which amounts to the denial of a speedy trial.

Finally, the defendant complains that he was subjected to cruel and unusual punishment. This claim is based on the assertion that, while the defendant was confined in jail awaiting trial and unable to furnish bail, the jail physician denied him proper medication for his claimed ailments and that, because of

his condition, he was unable to eat some of the food provided for him. There is no basis in the finding for such a claim. Furthermore, there is no claim that the statutes under which he was sentenced, or the sentence imposed by the court under the statutes, amounted to cruel and unusual punishment under the eighth amendment to the constitution of the United States which is made applicable to the states by the fourteenth amendment. *Robinson* v. *California*, 370 U.S. 660, 666, 82 S. Ct. 1417, 8 L. Ed. 2d 758, rehearing denied, 371 U.S. 905, 83 S. Ct. 202, 9 L. Ed. 2d 166. Nor does the defendant suggest in what manner the treatment complained of, before trial, could form a valid basis for a reversal of the judgment of conviction.

The defendant has cited no authority whatever for his claim. The term "punishment" has been defined as "any pain, penalty, suffering, or confinement inflicted on a person by authority of law and the judgment or sentence of a court for some crime or offense committed by him." 21 Am. Jur. 2d 542, Criminal Law, § 576. A sentence which is within the statutory limits, as this sentence was, is not, as a matter of law, cruel and unusual punishment. *State* v. *McNally*, 152 Conn. 598, 603, 211 A.2d 162, cert. denied, 382 U.S. 948, 86 S. Ct. 410, 15 L. Ed. 2d 356. Lacking any assistance from counsel on either side, we have made an independent search for authority to support a claim such as the defendant now makes. While courts have entertained claims of mistreatment of various sorts, usually made by prisoners in proceedings such as habeas corpus or for an injunction, we have found no instance in which mistreatment of the sort claimed here prior to trial has been entertained as a ground for attacking, on appeal, a judgment rendered within the limits of the

statute punishing the offense. See cases such as *Wright* v. *McMann*, 387 F.2d 519 (2d Cir.); *Heft* v. *Parker*, 258 F. Sup. 507 (M.D.Penn.); *Austin* v. *Harris*, 226 F. Sup. 304 (W.D.Mo.); *United States ex rel. Yaris* v. *Shaughnessy*, 112 F. Sup. 143 (S.D.N.Y.); *Ex parte Pickens*, 101 F. Sup. 285 (D.Alas.); *Chapman* v. *Graham*, 2 Utah 2d 156, 270 P.2d 821; *Brown* v. *State*, 152 Fla. 853, 13 So. 2d 458. Consequently, we find the claim of cruel and unusual punishment to be without merit.

There is no error.

In this opinion the other judges concurred.